

Before the
Federal Communications Commission
Washington, D.C. 20554

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DEC 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Telecommunications Services)

Inside Wiring)

Customer Premises Equipment)

In the Matter of)

Implementation of the Cable)

Television Consumer)

Protection and Competition)

Act of 1992)

Cable Home Wiring)

CS Docket No. 95-184

MM Docket No. 92-260

**COMMENTS OF AMERITECH
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

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December 23, 1997

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**COMMENTS OF AMERITECH
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

I. Introduction and Summary

Ameritech New Media, Inc. ("Ameritech")¹ respectfully submits the following comments on the issues raised in the Second Further Notice of Proposed Rulemaking ("NPRM") released as part of the Commission's Report and Order in the above-captioned dockets on October 17, 1997 ("Report and Order").² In the NPRM, the Commission solicited additional comment on the following issues left unresolved by its October 17 Report and Order: the permissibility of exclusive service contracts between service providers and multiple dwelling unit ("MDU") owners; the application of certain cable inside wire rules to all multichannel video programming distributors ("MVPDs");

¹ Ameritech New Media, Inc., which is a subsidiary of Ameritech Corp., began operation as a competitive cable operator in May 1996, and currently has 63 franchises and serves 39 communities in the Chicago, Detroit, Cleveland and Columbus area markets.

² *In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment; In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, CS Docket No. 95-184, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97-376 (rel. October 17, 1997).

whether certain broadband service providers should be exempt from signal leakage reporting requirements; and whether the Commission should mandate simultaneous use of cable home run wiring³ by multiple MVPDs.

Ameritech believes that, in seeking to resolve the issues raised in the NPRM, the Commission should at all times be guided by Congress's objective of promoting competition and consumer choice in the multichannel video distribution market.⁴ Application of this principle suggests that the Commission should prohibit exclusive service contracts between MVPDs and MDU owners, and apply its cable inside wire rules to all MVPDs. Additionally, while Ameritech does not, in principle, object to simultaneous use of home run wiring by multiple MVPDs, it believes the Commission must resolve a broad range of technical and operational issues before adopting such a requirement.⁵

II. Exclusive Service Contracts Between MDU Owners and MVPDs Should be Prohibited

In the Report and Order, the Commission acknowledged that exclusive service contracts raise significant competitive issues. In particular, the Commission expressed concern that long-term exclusive contracts could have the effect of locking up MDU properties, preventing consumers from receiving the benefits of newly competitive multichannel video distribution markets. The Commission also, however, appeared to accept the argument of some alternative providers that limited-term exclusive contracts can have procompetitive benefits as a means of securing financing because they assure

³ "Home run" wiring is the wiring that runs from the point at which it becomes dedicated to an individual unit in a MDU to the cable demarcation point at or about 12 inches outside that unit.

⁴ Section 601 of the Communications Act states that one of the purposes of Title VI of the Act, which governs cable communications, is "to promote competition in cable communications." *See* 47 U.S.C. § 521(6). Similarly, in the Cable Television and Consumer Protection Act of 1992 ("1992 Cable Act"), Congress specifically expressed a preference for competition over regulation as a means of setting rates for cable services. *See* 47 U.S.C. § 543(a).

⁵ Ameritech does not address herein whether certain broadband service providers, such as small providers, should be exempt from the Commission's signal leakage reporting requirements.

investors that they will recover the cost of new installations. The Commission, therefore, solicited comment on various proposals to address the anticompetitive effects of exclusive contracts, while, at the same time, preserving the alleged procompetitive effects of such arrangements.⁶

Ameritech believes that exclusive service contracts between MDU owners and MVPDs, even those of limited duration, can be viewed as procompetitive only in a historical context. Historically, the multichannel video distribution market has been dominated by monopoly cable operators that were the only providers offering broad-based multichannel video services throughout their franchise areas. Beginning largely in the 1980s, certain alternative service providers (*e.g.*, MMDS and SMATV providers) began to offer competing service to narrow segments of the market (such as to individual, large MDUs). These niche service providers may indeed have required exclusive service contracts to attract financing because of the high cost of their systems. Such providers have not, however, emerged as significant competitors to incumbent cable operators. Nor have exclusive service contracts resulted in a competitive MDU marketplace or significantly increased consumer choice for MDU owners and tenants. Now that full-service, truly alternative service providers like Ameritech have begun to emerge, offering competing service throughout incumbents' franchise areas, exclusive service contracts for MDUs have significantly constrained competition and consumer choice by denying such providers access to a significant segment of the market. If the Commission's objective is to maximize competition and consumer choice in the multichannel video distribution market, it should not focus solely on niche service providers that seek to serve only large MDUs in limited geographic areas, but rather should consider the impact of exclusive service contracts for MDUs on the market as a whole.

⁶ These proposals include: (1) adopting a maximum cap on the enforceability of MVPDs' exclusive contracts; (2) limiting the ability of MVPDs with market power to enter into exclusive contracts; and (3) adopting a "fresh look" period for perpetual exclusive contracts. "Perpetual" exclusive contracts extend for the life of the provider's franchise and any extension thereof, and are perpetual because franchises rarely are not renewed.

a. Exclusive service contracts for MDUs preclude competition and limit consumer choice.

The anticompetitive effects of exclusive service contracts in the MDU context are well established. Such contracts have, as the Commission recognized, been used by incumbent MVPDs to lock up MDU properties and prevent competing MVPDs from accessing MDU properties, even if the competing MVPDs have obtained permission from the MDU owner. Ameritech's experience indicates that many incumbent MVPDs invoke contractual exclusivity rights (which often were negotiated long before the MDU owners had any viable alternative) to prevent MDU owners from negotiating access agreements with new entrants, such as Ameritech, rather than responding to competition through lower prices and improved service offerings.⁷ Ameritech's experience is not unique. In the October 17 Report and Order, the Commission found that the record indicated that, where property owners or subscribers have sought an alternative video service provider, instead of responding to competition through improved service offerings, incumbents have, *inter alia*, invoked written agreements for continued service and perpetual exclusive contracts entered into by the incumbent and prior owner.⁸ Exclusive service contracts have, therefore, allowed incumbent service providers effectively to preclude competition in the delivery of multichannel video programming to MDUs by denying new entrants access to MDU properties.

The anticompetitive effect of exclusive contracts for MDUs cannot be overstated. In the October 17 Report and Order, the Commission found that, as of 1990, MDUs

⁷ See Ex Parte Letter from James K. Smith, Director, Federal Relations, Ameritech, to William F. Caton, Acting Secretary, Federal Communications Commission (January 22, 1997) ("[Ameritech] has been precluded from negotiating with MDU building owner/managers in 22% of the units where [Ameritech] has sought access due to exclusive provisions in existing contracts with the incumbent cable provider."). See also Ex Parte Letter from James K. Smith, Director, Federal Relations, Ameritech, to Meredith Jones, Chief, Cable Services Bureau, Federal Communications Commission (May 15, 1997) (attaching a letter sent by Comcast Cable notifying numerous MDU owners with whom Ameritech was negotiating, or had negotiated, service agreements that Comcast had an exclusive right to provide service to their properties, even though some of the MDUs were not the subject of an exclusive contract with Comcast). Copies of the foregoing *ex partes* are attached.

⁸ Report and Order, FCC 97-376 at para. 38.

comprised almost 30% of total housing units nationwide, and are the fastest growing segment of the housing market.⁹ In addition, the Commission found that MDUs make up 32 percent to 84 percent of the housing market in cities with the greatest number of households receiving cable service.¹⁰ Permitting incumbent and other MVPDs to continue to lock up such a large, and growing, segment of the multichannel video distribution market would have a devastating impact on cable competition.

Moreover, permitting MVPDs to lock up MDUs through exclusive service contracts would deny millions of American consumers the full benefits of cable competition mandated by Congress. This is true regardless of whether the MVPD asserting exclusive access is an incumbent cable operator with market power or a new entrant. Ameritech questions whether the Commission should, in the name of promoting competition, sanction exclusive service contracts for MDUs in order to reduce marginally the time required for some alternative service providers to recover their investments, and thereby deny MDU tenants the benefits of competition. Ameritech notes that exclusive service contracts for MDUs are, in essence, contractual monopolies that have much the same effect as exclusive cable franchises. In addition, the same arguments proffered to justify exclusive contracts for MDUs (that is, the need to ensure a return on investment in order to attract low cost financing) could apply equally to support exclusive cable franchises. Congress, however, has determined that exclusive franchises should be prohibited.¹¹ Ameritech submits that the Commission should treat MDUs no differently from franchises, some of which have a smaller subscriber base than large MDUs.

⁹ *Id.* at para. 36.

¹⁰ *Id.*

¹¹ *See* 47 U.S.C. § 541(a).

b. Exclusivity is not necessary to attract investment or to recover installation costs.

Despite the clearly established anticompetitive effects of exclusivity in the MDU context, some alternative video service providers persist in arguing that limited duration exclusive contracts have procompetitive benefits by enabling new entrants to attract necessary investment, and recover the cost of new installations over time. Exclusivity is not, however, necessary to attract efficient investment or to recover the cost of new installations. To be sure, prohibiting exclusive contracts may marginally increase the cost of capital or the time necessary to recover the cost of installing new facilities by eliminating investors' guaranteed return on investment. Nevertheless, even without a guaranteed return on investment, efficient new entrants will continue to attract financing, and to install new facilities in MDUs in return for the undisturbed right to provide *nonexclusive* service to MDU tenants. Moreover, focusing solely on whether prohibiting exclusive contracts for MDUs would make it marginally more difficult for certain niche service providers to attract low-cost financing is inappropriate because a service provider's ability to attract capital investment should be based on the attractiveness to customers (in terms of price and quality) of the service it offers, not on whether the service provider has a captive subscriber base.

In addition, prohibiting incumbents from enforcing exclusivity provisions in existing contracts would not affect the incumbents' rights to provide nonexclusive service pursuant to such contracts. Nor would it compel MDU owners to admit competing video service providers over their objection. Rather, it would simply permit new entrants to provide competing service, if the MDU owner so requests. Moreover, the need for exclusivity to recover the cost of existing investment appears to be overstated because many MDUs are locked up by exclusive contracts that were negotiated before MDU owners had any choice of video service provider, and incumbent MVPDs have provided service pursuant to such contracts for many years and fully recovered their investment

costs. In light of the significance of the MDU market, the marginal, and indeed speculative, procompetitive effects of exclusive service contracts are significantly outweighed by the anticompetitive effects of such arrangements, and, therefore, should be prohibited.

- c. **The Commission's proposals for addressing the anticompetitive effects of exclusive service contracts are administratively burdensome, and would delay the development of competition.**

The options proposed by the Commission to address the anticompetitive effects of exclusive contracts would be administratively burdensome and difficult to implement, and would delay significantly the development of competition and consumer choice in the delivery of multichannel video services to MDUs. The Commission first proposes adopting a cap on the length of exclusive contracts for all MVPDs that would limit the enforceability of such contracts to the amount of time presumed necessary to recover the capital costs of providing service. This proposal is inherently arbitrary because it presumes that all MVPDs incur equivalent costs to provide service to MDUs. Moreover, because the Commission proposes to allow MVPDs to extend the enforceability of exclusivity provisions if they can demonstrate that they have not had a reasonable opportunity to recover their costs, the Commission will, ultimately, become enmeshed in case-by-case adjudications to determine whether particular MVPDs have recovered their specific investment costs. Additionally, an incumbent could easily evade any cap adopted by rebuilding its plant or investing in new facilities, even if such investment will not result in improved service or lower prices, in order to extend its right to exclusive access. Such an approach is, therefore, wasteful of Commission resources and unlikely to reduce significantly the anticompetitive impact of exclusive contracts on the MDU market.

Alternatively, the Commission proposes to limit exclusive contracts only where the relevant MVPD possesses market power. This proposal too is administratively impracticable because it would require the Commission to engage in widespread, case-

by-case adjudications to determine whether particular MVPDs have market power. In light of the Commission's limited resources, such adjudications would likely be prolonged, denying consumers the benefits of competition in the interim. A market power approach also would effectively limit consumer choice and the scope of competition in the MDU market because it would allow existing service providers that lack market power to lock up MDU buildings before new entrants can build out their networks,¹² and, therefore, prevent new entrants from offering competing services.

Finally, the Commission seeks comment on whether it should adopt a fresh look for perpetual, or other, exclusive contracts. A fresh look for exclusive contracts would, however, raise more questions than it would answer. A fresh look that is triggered by a determination that a particular MVPD has market power, or upon the expiration of a cap, would, for example, create considerable uncertainty about the enforceability of exclusive contracts, and spawn litigation over whether, in a given case, the fresh look window has been triggered or expired. In addition, limiting any fresh look to a one-time opportunity (such as by opening a 180-day fresh look window for MDU owners on the effective date of the Commission's rules) would prejudice MDU owners who do not yet have viable competitive alternatives, and limit the scope of competition to existing service providers by locking out any new entrant that was not operational when the fresh look window closed. A one-time fresh look also would deprive MDU owners and tenants of new technologies that were not available during the fresh look window. The Commission, therefore, should not adopt a fresh look for exclusive contracts for MDUs.

In light of the limited and speculative nature of the procompetitive benefits of exclusive contracts for MDUs, the demonstrated anticompetitive effects of such contracts, and the administrative impracticability of the options proposed by the Commission,

¹² Because of the franchise process, and the length of time required to construct a franchise-wide cable system, existing service providers often know where a new entrant like Ameritech proposes to provide service long before the new entrant is able to provide service or negotiate access to MDU buildings.

Ameritech submits that the only reasonable approach is simply to prohibit MVPDs from entering into, or enforcing, exclusive service contracts for MDUs.

III. The Commission has Authority to Prohibit Exclusive Service Contracts for MDUs

The Commission has authority to adopt a rule prohibiting all MVPDs from entering into, and enforcing, exclusive contracts for the provision of video services to MDUs under sections 4(i) and 303(r) of the Communications Act.¹³ These provisions generally authorize the Commission to perform any and all acts, and make such rules and regulations, not inconsistent with the Communications Act, as may be necessary to carry out its functions. Consequently, they authorize the Commission to take action even if such action is not expressly authorized by the Communications Act, provided the action is not expressly prohibited and is necessary to execute the Commission's functions.

The rule Ameritech proposes is necessary in order to achieve Congress's clearly expressed objectives of promoting reasonable cable rates through the introduction of competition, and promoting competition generally in cable communications. In section 623 of the Communications Act, Congress required the Commission to ensure that basic cable rates are reasonable, and that charges for the installation and lease of cable equipment, including home wiring, are reasonable and based on actual cost.¹⁴ In so doing, Congress expressed a clear preference for competition as a means of achieving this goal.¹⁵ A rule prohibiting exclusive service contracts between MVPDs and MDU owners

¹³ Section 4(i) authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Similarly, section 303 authorizes the Commission to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . .". 47 U.S.C. § 303(r).

¹⁴ 47 U.S.C. § 543.

¹⁵ *Id.*

would substantially increase competition in the provision of video services to MDUs, and help ensure that rates charged to MDU tenants and owners for basic cable services and the installation and lease of cable equipment are reasonable. Absent such a rule, MVPDs could continue to exercise exclusivity rights to prevent MDU tenants and owners from benefiting from newly competitive cable markets.

The adoption of such a prohibition would also advance Congress's objective of promoting competition generally in cable communications. This objective is clearly enunciated in section 601 of the Communications Act, which states that one of the purposes of Title VI, which establishes a pervasive, national regulatory framework for cable communications, is to "promote competition in cable communications"¹⁶ It is also exemplified by section 621, which expressly forbids the grant of exclusive cable franchises in order to promote the development of competition in cable communications.¹⁷ The foregoing provisions, therefore, support the Commission's authority to take actions necessary to promote competition in cable communications, including adopting a rule prohibiting all MVPDs from entering into, or enforcing, exclusive service contracts for MDUs.¹⁸

A rule prohibiting MVPDs from entering into, or enforcing, exclusive service contracts for MDUs is not inconsistent with the Communications Act. Nothing in Title VI, or any other provision, of the Communications Act prohibits the Commission from adopting such a rule. Moreover, such a rule would plainly advance one of the stated objectives of Title VI -- promoting competition in cable communications.

¹⁶ 47 U.S.C. § 521(6).

¹⁷ 47 U.S.C. § 541(a)(1). As discussed above, Ameritech believes that exclusive service contracts for MDUs are functionally equivalent to exclusive franchises, some of which are smaller than many large MDUs, and should similarly be prohibited.

¹⁸ In passing the Telecommunications Act of 1996 ("1996 Act"), Congress reiterated its commitment to promoting competition in *all* communications markets. See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (stating that the objective of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . .").

Such a rule also would not be inconsistent with any other provision of law. In particular, the rule proposed by Ameritech would not result in an impermissible taking under the Fifth Amendment. The proposed rule would not physically invade, or deprive incumbent MVPDs of, any physical property.¹⁹ Voiding the exclusivity provisions of existing exclusive service contracts for MDUs also would not nullify such contracts, nor would it affect the incumbent MVPDs' contractual rights to provide service to MDUs on a *nonexclusive* basis.²⁰ Although providing video services to MDUs on a nonexclusive basis might deny incumbent MVPDs a guaranteed subscriber base, incumbents would still be able to recover their investments in MDU facilities to the extent that they can attract customers based on the price and quality of their service offerings. Moreover, denying incumbent MVPDs a guaranteed revenue stream from a captive subscriber base could hardly be deemed a taking under the Fifth Amendment.²¹

In addition, the adoption of such a rule would not interfere with any reasonable business expectation on the part of incumbent MVPDs.²² Ameritech submits that incumbent MVPDs could not legitimately expect that the MDU market would remain closed to competition due to exclusive service contracts, in light of the pervasive goal in the Communications Act, as amended, of promoting competition and consumer choice in cable communications. Accordingly, the rule proposed by Ameritech would not constitute an impermissible taking or otherwise conflict with law.

¹⁹ See *Andrus v. Allard*, 444 U.S. 51, 65-66 (1979) (emphasizing that the regulations challenged did not physically invade or deprive appellees of their property).

²⁰ Ameritech is not proposing to allow MDU owners to abrogate completely their existing service contracts with MVPDs. Rather, it is proposing only that MVPDs not be permitted to prevent MDU owners from allowing competing video service providers to access their buildings to offer competing services to their tenants.

²¹ See *Andrus v. Allard*, 444 U.S. at 65-66 (observing that the "loss of future profits – unaccompanied by any physical property restriction – provides a slender reed upon which to rest a takings claim"); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922) (holding that "[g]overnment could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.").

²² See *American Continental Corp. V. U.S.*, 22 Cl. Ct. 692, 697 (1991) ("[W]hen an investment is made in . . . a highly regulated industry, to be reasonable, expectations must be based not only on then-

For the foregoing reasons, Ameritech believes that the Commission has authority under sections 4(i) and 303(r) of the Communications Act to adopt a rule prohibiting MVPDs from entering into, or enforcing, exclusive service contracts for MDUs.

IV. The Commission Should Apply its Cable Home Wiring Rules to All MVPDs

Ameritech supports the Commission's proposal to apply to all MVPDs its cable home wiring rules for single-unit installations, and to expand to all MVPDs its rule regarding cable subscribers' rights to provide and install their own cable home wiring and to connect additional home wiring to wiring installed and owned by a cable operator. Ameritech believes that the competitive concerns that led the Commission to adopt these rules pertain regardless of whether a cable operator or some other video service provider initially installed a subscriber's or MDU's inside wiring. Applying these rules to all MVPDs would promote competition in cable communications, increased consumer choice, lower prices and greater technical innovation. In addition, for the reasons discussed above, Ameritech believes that the Commission has authority under sections 4(i) and 303(r) to apply its cable inside wiring rules to all MVPDs.

V. The Commission Must Address a Broad Range of Issues Before Mandating Simultaneous Use of Home Run Wiring

The Commission has solicited comment on a proposal by DIRECTV that it require competing broadband service providers to share home run wiring in MDUs. In principle, Ameritech does not object to DIRECTV's proposal, but believes that the Commission must address a broad range of operational and technical issues before mandating simultaneous use of home run wiring by competing service providers. Such issues include:

existing federal regulations but also on the recognition that there may be related changes in the regulations in the future.") (citations omitted).

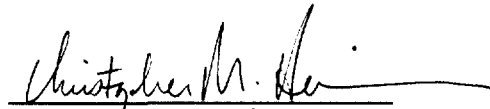
- Whether simultaneous use of home run wiring would significantly degrade cable signal quality due to interference, impede interference resolution, or result in signal leakage.
- Whether wire maintenance and installation practices and devices (such as the use and quality of fittings, allowable turn radii, wire type, and type and number of passive and active devices) necessary to provide service at one end of the spectrum are suitable to provide service at a different end of the spectrum.
- How competing service providers should coordinate installation and maintenance to ensure that they do not interrupt each others' services when installing, maintaining, or repairing inside wiring.
- How the initial demarcation point can be divided amongst competing service providers without requiring them to surrender proprietary access to their demarcation facilities, and allow for simultaneous use by two service providers.

Ameritech lacks sufficient information to comment on these issues at this time, but urges the Commission to examine them closely before acting on DIRECTV's proposal.

VI. Conclusion

For the reasons discussed above, Ameritech believes that the Commission should prohibit exclusive service contracts between MVPDs and MDU owners, and apply its cable inside wire rules to all MVPDs. Additionally, the Commission should examine a broad range of technical and operational issues before mandating simultaneous use of home run wiring by multiple MVPDs.

Respectfully submitted,



Christopher M. Heimann
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Room 1020
1401 H Street, N.W.
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202-326-3818

December 23, 1997

Ameritech

James K. Smith
Director
Federal Relations

January 22, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

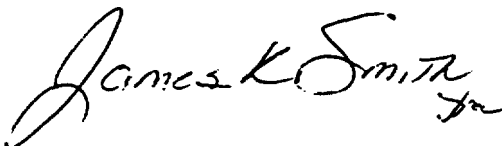
Re: Ex Parte Statement
CC Docket 95-184

Dear Mr. Caton:

Separate meetings were held with Commissioner Susan Ness, Ms. Suzanne Toller, Ms. Anita Wallgren, Ms. Jackie Chorney, and Ms. Marsha MacBride. Ameritech's representatives included myself, Mr. Anthony Ruopoli, General Manager, and Mr. Ali Shadman, Vice President, Network Operations.

The purpose of the meetings was to explain Ameritech New Media's (ANM) position on cable inside wire. Specifically, ANM urged that the Commission establish a competitive access point allowing for the interconnection of multiple service providers in MDUs. This action is necessary based on ANM's experience that for 20% of the units for which ANM has sought access, the building owner has denied access due to a desire to have only a single wire running to individual units. Moreover, ANM has urged the Commission to find exclusive contract provisions entered into prior to the entry of a competing Title VI cable provider by a MDU owner/manager with the incumbent cable provider to be unenforceable. This action is necessary because ANM has been precluded from negotiating with MDU building owner/managers in 22% of the units where ANM has sought access due to exclusive provisions in existing contracts with the incumbent cable provider.

Sincerely,



cc: Commissioner Ness
A. Wallgren

S. Toller
J. Chorney

M. MacBride



James K. Smith
Director
Federal Relations

May 15, 1997

Ms. Meredith Jones, Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street, NW
Room 918
Washington, DC 20554

Re: CC Docket 95-184
Cable Inside Wire

Dear Ms. Jones:

Ameritech New Media, Inc. (Ameritech) has previously expressed its concerns in this proceeding regarding efforts by incumbent cable operators to inhibit consumer choice and competition in the delivery of video programming to consumers residing in multiple dwelling units. The attached letter illustrates the efforts by Comcast in Sterling Heights, Michigan to impede consumer choice. Mr. Anthony Ruopoli of Ameritech has set forth in the attached statement how such conduct is thwarting the development of competition.

I ask you to consider this as evidence of conduct in the marketplace, the only purpose of which is to inhibit competition. It is Ameritech's position that the Commission should find assertions of exclusivity rights by incumbent cable operators to be unenforceable. Exclusive arrangements are antithetical to consumer choice and the mandate set forth in the Communications Act to promote competition in the delivery of video programming.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim Smith", written over a horizontal line.

Attachments

cc: Secretary's Office (ex parte)
Suzanne Toller
Anita Wallgren
Gretchen Rubin
Marsha MacBride

Comcast Cable
6095 Wall Street
Sterling Heights, MI 48312
810 978-0467



April 28, 1997

East Lakeside Apartments
43976 Freeway Drive
Sterling Heights, MI 48313

RE: Comcast Cablevision Exclusive Agreement to Provide
Cable Television Services at East Lakeside Apartments

Dear Sir:

It has come to our attention that you may be considering an agreement with Americast to provide cable television services to the above named complex you own.

In case you are unaware, Comcast has the exclusive right to provide cable television service to your property. Our agreement executed July 13, 1982, by the owner of the property, expresses that right and is "binding upon the parties, their successors or assigns." We trust you will find this information helpful and shall abide by the terms and conditions of this agreement.

We at Comcast value our long standing relationship and appreciate the opportunity to serve the residents who live within your complex. We look forward to continuing to provide your residents with state-of-the-art cable television programming, and many new products and services, well into the 21st century.

If you have any questions regarding this matter or need additional information, please contact me directly at (810) 978-3506.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen A. Feiger', written over a circular scribble.

Karen A. Feiger
Commercial Development

Declaration of Anthony Ruopoli

I, Anthony Ruopoli, do declare as follows:

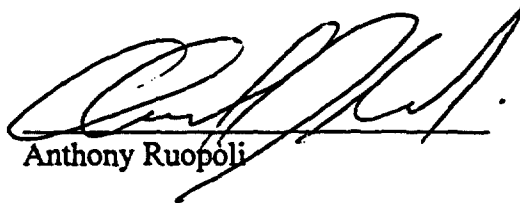
1. I, Anthony Ruopoli, am General Manager, MDU Sales and Service for Ameritech New Media, Inc. ("Ameritech"). I am responsible for directing the sales and service efforts for multiple dwelling units in Ameritech's franchise areas.
2. Ameritech has franchises to serve the following communities in the Detroit, Michigan area where Comcast Cable Communications, Inc. ("Comcast"), or related entity, is the incumbent cable television operator: Sterling Heights, [etc.]. Of those communities, Ameritech is currently serving customers in Sterling Heights, [etc.], including some multiple dwelling units.
3. On or about April 28, 1997, Comcast sent a letter to a number of multiple dwelling unit owners purporting to have an exclusive agreement to provide cable television services to the particular multiple dwelling units. A copy of the letter is attached.
4. To my knowledge and belief, Comcast mass mailed this or similar letters to many multiple dwelling units with which Comcast has a service agreement and with which Ameritech was negotiating or had negotiated a service agreement to provide cable television service in competition with Comcast.
5. To my knowledge and belief, some of the multiple dwelling units which received such a letter do not have an exclusive agreement with Comcast. In other instances, Comcast has recently attempted to renegotiate new exclusive service agreements with some multiple dwelling unit owners.
6. To my knowledge and belief, Comcast is attempting to prevent Ameritech from competing against Comcast in the multiple dwelling unit market in the above communities. As a result, the residents of such multiple dwelling units will be denied the benefits of competition.
7. As a result of Comcast's efforts, some multiple dwelling unit owners, with whom Ameritech had already reached an agreement and whose buildings had already been wired, are now requesting that Ameritech not proceed to commence service to those multiple dwelling units.

8. I hereby declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Date

5/13/97

Anthony Ruopoli

A handwritten signature in black ink, appearing to read 'Anthony Ruopoli', written over a horizontal line.